

ORDER OF THE GENERAL COURT (Grand Chamber)

4 June 2024 (*)

(Actions for annulment – Regulation (EU) 2021/241 of the European Parliament and of the Council – Council Implementing Decision of 17 June 2022 on the approval of the assessment of the recovery and resilience plan for Poland – Lack of direct concern – Inadmissibility)

In Joined Cases T-530/22 to T-533/22,

Magistrats européens pour la démocratie et les libertés (Medel), established in Strasbourg (France), represented by C. Zatschler, E. Egan McGrath, Senior Counsel, A. Bateman and M. Delargy, Solicitors,

applicant in Case T-530/22,

International Association of Judges, established in Rome (Italy), represented by C. Zatschler, E. Egan McGrath, Senior Counsel, A. Bateman and M. Delargy, Solicitors,

applicant in Case T-531/22,

Association of European Administrative Judges, established in Trier (Germany), represented by C. Zatschler, E. Egan McGrath, Senior Counsel, A. Bateman and M. Delargy, Solicitors,

applicant in Case T-532/22,

Stichting Rechters voor Rechters, established in The Hague (Netherlands), represented by C. Zatschler, E. Egan McGrath, Senior Counsel, A. Bateman and M. Delargy, Solicitors,

applicant in Case T-533/22,

v

Council of the European Union, represented by M. Chavrier, J. Bauerschmidt, E. Rebasti and A. Sikora-Kalèda, acting as Agents,

defendant,

supported by

Hungary, represented by M. Fehér, acting as Agent,

by

Republic of Poland, represented by B. Majczyna and S. Żyrek, acting as Agents,

and by

European Commission, represented by S. Delaude, K. Herrmann and T. Adamopoulos, acting as Agents,

interveners,

THE GENERAL COURT (Grand Chamber),

composed of M. van der Woude, President, S. Papasavvas, F. Schalin, R. da Silva Passos, J. Svenningsen, M. Kancheva, E. Buttigieg, V. Tomljenović, P. Škvařilová-Pelzl, I. Nömm, G. Steinfatt, D. Kukovec (Rapporteur), T. Tóth, B. Ricziová and L. Spangsberg Grønfeldt, Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure, including:

- the decision of 11 November 2022 to join the cases;
- the plea of inadmissibility raised by the Council by document lodged at the Registry of the General Court on 13 December 2022 and the applicants’ observations;
- the decision of 19 December 2022 to adjudicate under an expedited procedure;
- the decision of 31 March 2023 to reserve its decision on the plea of inadmissibility until it rules on the substance of the case;
- the statements in intervention lodged at the Court Registry on 17 and 19 July 2023 respectively by Hungary, the Republic of Poland and the European Commission, and the observations of the main parties;
- the statement of modification of the applications lodged at the Court Registry on 19 February 2024 and the observations of the Council and the Commission,

makes the following

Order

- 1 By their actions based on Article 263 TFEU, the applicants, Magistrats européens pour la démocratie et les libertés (Medel) in Case T-530/22, International Association of Judges (IAJ) in Case T-531/22, Association of European Administrative Judges (AEAJ) in Case T-532/22 and Stichting Rechters voor Rechters in Case T-533/22, seek annulment of the Council Implementing Decision of 17 June 2022 on the approval of the assessment of the recovery and resilience plan for the Republic of Poland (‘the initial decision’), as amended by the Council Implementing Decision of 8 December 2023 (‘the contested decision’).

Background to the dispute and the contested decision

- 2 Under the Recovery and Resilience Facility (‘the Facility’), established by Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ 2021 L 57, p. 17), funds may be granted to the Member States, in the form of a financial contribution, which consists, in accordance with Article 2(2) of that regulation, in non-repayable financial support or in the form of a loan.
- 3 On 17 June 2022, the Council adopted the initial decision. The adoption of that decision was made public by way of a Council press release of the same date.
- 4 On 31 August 2023, the Republic of Poland submitted to the Commission an amended version of its recovery and resilience plan.
- 5 On 8 December 2023, the Council adopted a decision which amended the initial decision. That decision amends the initial decision, inter alia, by including a ‘REPowerEU’ chapter and by adjusting the amount available for the financial contribution and loan. By contrast, milestones F1G, F2G and F3G, set out in the annex to the contested decision, which relate to the reform of the Polish judicial system, remained unchanged.
- 6 The contested decision is addressed, in accordance with Article 4 thereof, to the Republic of Poland.
- 7 By the contested decision, the Council approved, in accordance with the first sentence of Article 1 thereof, the assessment of the recovery and resilience plan for the Republic of Poland.

- 8 In accordance with the second sentence of Article 1 of the contested decision, the milestones and targets to be achieved by the Republic of Poland are specified in the annex to that decision.
- 9 In accordance with Article 2(1) of the contested decision, the amount of the available financial contribution is set, in principle, at EUR 25 276 853 716.
- 10 In accordance with Article 2(2) of the contested decision, the Commission is to make the financial contribution available to the Republic of Poland in the form of several payments, in accordance with the annex to that decision. The payments may be made by the Commission in several instalments.
- 11 In accordance with Article 2(3) of the contested decision, the release of the payments presupposes, inter alia, that the Commission has taken a decision, in accordance with Article 24 of Regulation 2021/241, recognising that the Republic of Poland has satisfactorily achieved the milestones and targets identified in the annex to that decision.
- 12 Lastly, in accordance with Article 3(1) of the contested decision, the amount of the available loan is set, in principle, at EUR 34 541 303 518.
- 13 The annex to the contested decision consists of three parts.
- 14 Part 1 is dedicated to the reforms and investments provided for in the recovery and resilience plan. The stipulated reforms and investments are planned to be carried out by the Republic of Poland during the period between the last quarter of 2021 and the second quarter of 2026.
- 15 The measures relating to the reform of justice in Poland are specified in milestones F1G, F2G and F3G.
- 16 In accordance with milestone F1G, several measures must be taken to strengthen the independence and impartiality of Polish judges. According to the indicative timetable, that part of the reform was supposed to be implemented, through the adoption of legislation, during the second quarter of 2022.
- 17 In accordance with milestone F2G, measures must be taken to ensure that the judges affected by decisions of the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland) ('the Disciplinary Chamber') have access to proceedings allowing a review of the decisions of that chamber affecting them. According to the indicative timetable, that part of the reform was supposed to be implemented, through the adoption of legislation, also during the second quarter of 2022.
- 18 Milestone F2G is worded as follows:
- 'Entry into force of a reform which shall ensure that judges affected by decisions of the Disciplinary Chamber of the Supreme Court have access to review proceedings of their cases. Such cases already decided by the Disciplinary Chamber shall be reviewed by a court that meets the requirements of Article 19 paragraph 1 of the TEU, in accordance with the rules to be adopted on the basis of Milestone F1G above. The legislative act shall set out that the first hearing of the court to adjudicate those cases shall take place within three months from receipt of the motion of the judge asking for a review, and that the cases shall be adjudicated within twelve months from receipt of such motion. The cases which are currently still pending before the Disciplinary Chamber shall be referred for further consideration to the court and in accordance with the rules determined within the abovementioned proceedings.'
- 19 In accordance with milestone F3G, the review proceedings referred to in milestone F2G were, in principle, to be concluded, according to the indicative timetable, during the fourth quarter of 2023.
- 20 In addition, it follows from recital 45 of the contested decision that milestones F1G and F2G must be achieved before the Republic of Poland may make the first request for payment and that no payment can be made before those milestones are achieved. Thus, in accordance with point 2.1 of Section 2 of the annex to the contested decision, a payment under the first instalment of the financial contribution, amounting to EUR 2 758 738 902, is subject, inter alia, to the condition that the Republic of Poland has reached milestones F1G and F2G.

21 However, milestone F3G, according to which, in principle, any proceedings initiated under milestone F2G ('the review proceedings') must be concluded during the fourth quarter of 2023, does not lay down a condition for the payment of funding under the Facility.

22 Furthermore, it also follows from recital 45 of the contested decision that milestones F1G, F2G and F3G are without prejudice to the Republic of Poland's obligation to comply, at all times, with EU law and, in particular, with the second subparagraph of Article 19(1) TEU, as interpreted by the Court of Justice of the European Union.

23 Lastly, it follows in particular from recital 50 of the contested decision that the milestones relating to the reform of justice in Poland, namely milestones F1G, F2G and F3G, are without prejudice to ongoing or future infringement proceedings and, more generally, to the Republic of Poland's obligation to comply with EU law and, in particular, with the rulings of the Court of Justice of the European Union.

Forms of order sought

24 The applicants claim that the Court should:

- annul the contested decision;
- order the Council to pay the costs.

25 The Council contends that the Court should:

- dismiss the actions as inadmissible or, in the alternative, as unfounded;
- order the applicants to pay the costs.

26 Hungary contends that the actions should be dismissed as inadmissible.

27 The Republic of Poland contends that the actions should be dismissed as inadmissible or, in the alternative, as unfounded.

28 The Commission contends that the actions should be dismissed as inadmissible or, in the alternative, as unfounded, and that the applicants should be ordered to pay the costs.

Law

Subject matter of the dispute

29 The applicants challenge the contested decision in so far as milestones F1G, F2G and F3G, which are set out in its single annex, are incompatible with EU law.

30 The Council submits that, by their actions, the applicants are in fact challenging only those milestones, artificially isolating them from the operative part of the contested decision.

31 In that regard, contrary to what the Council submits, the subject matter of the actions cannot be understood as seeking only the annulment of milestones F1G, F2G and F3G, relating to the reform of the judicial system in Poland, irrespective of the operative part of the contested decision.

32 Those milestones, in particular milestones F1G and F2G, are an integral and essential part of the contested decision since, first, they are incorporated into Article 1 of that decision and, second, no payment under Articles 2 and 3 of that decision can be made until the Republic of Poland has satisfactorily reached those milestones.

33 Accordingly, the actions must be understood as seeking the annulment of the contested decision in its entirety.

Whether it is possible to give a decision by way of order

34 Under Article 130(1) of the Rules of Procedure of the General Court, a defendant may apply to the Court for a decision on inadmissibility without going to the substance of the case. Pursuant to Article 130(7) of those rules, the Court is to decide on the application as soon as possible.

35 By order of 31 March 2023, the Court decided to reserve, for the final judgment, its decision on the plea of inadmissibility raised by the Council.

36 However, in the light of the parties' pleadings and in view of their answers to the Court's various questions, the Court now considers that it can give a decision, by way of order adopted on the basis of Article 130(1) and (7) of the Rules of Procedure, on the Council's plea of inadmissibility, without there being any need to open the oral part of the procedure.

37 In those circumstances, the Court considers that the order of 31 March 2023 which reserved, for the final judgment, its decision on the plea of inadmissibility raised by the Council does not, in the present case, preclude the possibility of giving a decision on that plea by way of an order.

The plea of inadmissibility

38 In support of its plea of inadmissibility, first, the Council submits that the applicants are not entitled to bring proceedings in their own name. Second, the Council considers that the applicants also cannot rely on the situation of the judges whose interests they defend, since those judges themselves have neither standing to bring proceedings nor an interest in bringing proceedings.

39 The applicants dispute those assertions. In addition, they maintain, as regards the admissibility of their actions both in their own name and on behalf of the judges whose interests they defend, that, in the light of the particular circumstances of the present case, the conditions for admissibility, as set out in the current case-law, should be eased.

40 In accordance with settled case-law, actions for annulment brought by associations are held to be admissible in three types of situation: first, where a legal provision expressly grants a series of procedural powers to trade associations; second, where the association represents the interests of its members, who would themselves be entitled to bring proceedings; and, third, where the association is distinguished individually because its own interests as an association are affected, in particular because its negotiating position has been affected by the act in respect of which annulment is sought (see order of 8 May 2019, *Carvalho and Others v Parliament and Council*, T-330/18, not published, EU:T:2019:324, paragraph 51 and the case-law cited).

The admissibility of the applicants' actions acting in their own name

41 The applicants submit that they are associations whose mission is to defend the value of the rule of law and the independence of the judiciary. They regularly act as interlocutors with the EU institutions on rule of law matters and themselves have an institutional interest in defending judicial independence and the value of the rule of law. In addition to sending letters to several EU institutions, they have published various statements, in particular in the interests of defending the rights of Polish judges. Furthermore, they are associations representing judges and thus representing one of the powers of the State and cannot, therefore, be treated in the same way as other associations as regards the admissibility of their actions for annulment.

42 As regards the first type of situation set out in the case-law referred to in paragraph 40 above, the applicants do not rely on the existence of legal provisions that expressly grant them procedural powers and there is nothing in the files to support the conclusion that such provisions exist.

43 In addition, in so far as the applicants' line of argument, referred to in paragraph 41 above, must be interpreted as meaning that, in order to ensure effective judicial protection of the judiciary, in particular in the light of the value of the rule of law, enshrined in Article 2 TEU, they should be granted certain procedural powers, it must be held that no legal provision conferred powers on the applicants in order to ensure such protection in the context of the Facility.

44 Consequently, the applicants, as associations representing judges, cannot benefit from a procedural treatment differing from that accorded to any other association.

45 In those circumstances, the admissibility of the actions cannot be established in relation to the first type of situation referred to in paragraph 40 above.

46 As regards the third type of situation set out in the case-law referred to in paragraph 40 above, relating to whether the associations' own interests are affected, in particular as negotiators, it should be noted that the applicants have not established, in their cases, that they are affected.

47 The fact that the applicants were 'interlocutors' with the EU institutions, as they claim, in the general context of issues relating to the rule of law is not sufficient to confer on them the status of negotiator, for the purpose of the case-law referred to in paragraph 40 above, in the specific context of the adoption of the contested decision.

48 That also applies to the fact, relied on by the applicants in Cases T-530/22, T-531/22 and T-532/22, that they have observer status in various bodies of the Council of Europe, such as the European Commission for the Efficiency of Justice (CEPEJ) and the Consultative Council of European Judges (CCJE).

49 For the same reason, the fact, relied on by the applicant in Case T-533/22, that it intervened before the European Court of Human Rights in cases brought by Polish judges concerning the rule of law crisis in Poland is irrelevant.

50 Nor can the applicant's argument in Case T-530/22 [*confidential*] (1) establish that its own interests are affected. Mere reliance on that argument [*confidential*] does not establish that that applicant is directly concerned.

51 In the light of the foregoing, it must be concluded that the applicants have not satisfied the conditions relating to the first and third types of situation referred to in paragraph 40 above and, therefore, are not entitled, in the present case, to bring proceedings in their own name.

The admissibility of the applicants' actions acting on behalf of their members whose interests they defend

52 In accordance with the second type of situation set out in the case-law referred to in paragraph 40 above, associations have standing to bring proceedings where they represent the interests of their members who themselves are entitled to bring proceedings.

53 The Council disputes, in particular, the applicants' assertion that their standing to bring proceedings arises from the fact that they represent the interests of judges who themselves have standing to bring proceedings.

54 As a preliminary point, first, it should be noted that, in response to a question put by the Court, the applicants in Cases T-530/22, T-531/22 and T-532/22 stated that they were associations representing judges at international level whose members were, as a general rule, national professional associations, including Polish associations of judges.

55 In that regard, the applicants in those three cases submit that the case-law referred to in paragraph 40 above, relating to the standing, of associations acting on behalf of their members, to bring proceedings, must also be applied to the latter situation. In that context, they refer in particular to the judgment of 28 November 2008, *Hôtel Cipriani and Others v Commission* (T-254/00, T-270/00 and T-277/00, EU:T:2008:537), which held admissible an action brought by an association representing the interests of its members, composed of associations representing natural or legal persons which themselves were entitled to bring proceedings.

56 Second, it must also be noted that, in Case T-533/22, since the applicant is a foundation and does not, therefore, have members, it did not rely, in its action, on standing to bring proceedings resulting from the effect on the interests of the judges whose interests it defends. In its response to the plea of

inadmissibility raised by the Council, the applicant in that case argued that it was not important to know whether a body was acting on behalf of its members, since a membership link is not essential, but that it was sufficient for it to act on behalf of those whose interests it was defending.

57 The case-law set out in paragraph 40 may be applied to the specific situations referred to in paragraphs 54 and 56 above in the event that the members of the associations, the latter being members of the applicants, themselves are entitled to bring proceedings. In the present case, it is necessary to examine the *locus standi* of the judges who are members of the associations which are members of the applicants.

58 Under the fourth paragraph of Article 263 TFEU, ‘any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.’

59 Since the contested decision is addressed to the Republic of Poland, the admissibility of the actions must be examined in the light of the second and third limbs of the fourth paragraph of Article 263 TFEU, in which the condition of direct concern is required.

60 In that regard, the applicants argue that the judges whose interests they defend are directly concerned, distinguishing between three groups of judges, namely, first, the Polish judges affected by decisions of the Disciplinary Chamber who are directly concerned by the review proceedings envisaged in milestones F2G and F3G; second, all of the Polish judges who are directly concerned by those review proceedings and by milestone F1G and, third, all the other European judges who are also directly concerned by those milestones.

– *Whether the Polish judges affected by decisions of the Disciplinary Chamber are directly concerned*

61 It is necessary to examine whether the applicants, in order to demonstrate the admissibility of their actions, are justified in relying on the situation of the Polish judges who they claim are directly concerned by the introduction of review proceedings as envisaged in milestones F2G and F3G.

62 According to settled case-law, in order for a natural or legal person to be directly concerned by the measure being challenged, two cumulative criteria must be met, namely, first, the contested measure must directly affect the legal situation of that person and, second, it must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 43 and the case-law cited).

63 The Court has stated that, as regards the first condition, any act, whether regulatory or another type of act, may, in principle, directly concern an individual and thus directly affect its legal situation, irrespective of whether it entails implementing measures (judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 74).

64 Furthermore, in order to examine whether the contested decision is capable of directly affecting the legal situation of judges affected by decisions of the Disciplinary Chamber, it is necessary to examine the substance of the act in question and to assess those effects in the light of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the institution which adopted the act (see, to that effect, judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraphs 63 and 75).

65 In the first place, as regards the substance of the contested decision, assessed in the light of its content and context, it should be noted that Regulation 2021/241 was adopted on the basis of the third paragraph of Article 175 TFEU; that article relates to the Member States’ coordination of their economic policies with a view to attaining the objectives of economic, social and territorial coherence referred to in Article 174 TFEU.

- 66 Article 1 of Regulation 2021/241, relating to the subject matter of that regulation, provides that that regulation establishes the Recovery and Resilience Facility and that it lays down the objectives of the Facility, its financing, the forms of EU funding under the Facility and the rules for providing such funding. Recital 8 of Regulation 2021/241 states that the Facility is an innovative tool for providing direct financial support to Member States.
- 67 It is apparent from Article 4(1) of that regulation that the general objective of the Facility is to promote the economic, social and territorial cohesion of the European Union, inter alia, by improving the resilience, crisis preparedness and adjustment capacity of the Member States. Thus, the Facility is supposed to contribute, inter alia, to the upward economic and social convergence, to the restoration and promotion of sustainable growth and to the integration of the economies of the European Union.
- 68 To that end, Member States are to prepare recovery and resilience plans that are evaluated by the Commission. The evaluation is then approved by a Council implementing decision. Such a decision makes the payment of a financial contribution subject to compliance with conditions, namely the implementation of those plans, including the attainment of milestones and targets, which, in accordance with Article 2(4) of Regulation 2021/241, are measures of progress towards the achievement of a reform or an investment.
- 69 Article 15(2) of Regulation 2021/241 provides that, where the Commission considers that a request for loan support fulfils the criteria of paragraph 1, and upon adoption of the Council implementing decision referred to in Article 20(1) of that regulation, the Commission is to enter into a loan agreement with the Member State concerned.
- 70 Similarly, Article 23(1) of Regulation 2021/241 provides that, once the Council has adopted an implementing decision as referred to in Article 20(1) of that regulation, the Commission is to conclude an agreement with the Member State concerned, constituting an individual legal commitment within the meaning of the Financial Regulation.
- 71 Under Article 24(9) of Regulation 2021/241, where no tangible progress has been made in respect of any relevant milestones and targets by the Member State concerned, the Commission is to terminate the agreements referred to in Article 15(2) and Article 23(1) and is to decommit the amount of the contribution.
- 72 Thus, in the context of the contested decision, the purpose of the milestones is to lay down the conditions that are to be satisfied by the Republic of Poland and subsequently examined by the Commission for the purposes of deciding whether funds under the Facility may be granted to that Member State. Consequently, the relevance of those milestones is confined to the process of releasing funds under the Facility, in that the satisfactory achievement of those milestones is a condition for the payment of those funds.
- 73 In that regard, it must be noted that the contested decision laid down a whole set of milestones and targets to be achieved by the Republic of Poland. By way of example, for the sole purpose of releasing funding under the first instalment of the Facility, it was for the Republic of Poland to achieve, in addition to milestones F1G and F2G, 26 other milestones, as is apparent from point 2.1.1 of Section 2 of the annex to the contested decision.
- 74 It follows that the milestones, including milestones F1G, F2G and F3G, are of a budgetary conditionality nature in that the achievement of them is a condition for obtaining funding under the Facility.
- 75 Thus, in the context of the contested decision, the purpose of milestones F1G, F2G and F3G is to ensure compliance, first, with the criteria of Article 19(3)(b) and (j) of Regulation 2021/241 and, second, with the obligations laid down in Article 22 of that regulation, read in conjunction with Article 20(5)(e) of that regulation, in order to ensure an effective response to the challenges identified in the context of the European Semester and to ensure that the deficiencies in the Polish judicial system do not adversely affect the financial interests of the European Union.

- 76 It is true that, when adopting the contested decision, the Council was bound by the second subparagraph of Article 19(1) TEU and the value of the rule of law, in accordance with Article 2 TEU, and by the relevant case-law of the Court of Justice of the European Union.
- 77 In the same regard, milestones F1G, F2G and F3G reflect the relationship between, on the one hand, respect for the value of the rule of law and, on the other hand, the efficient implementation of the EU budget, in accordance with the principles of sound financial management and the protection of the European Union's financial interests (see, by analogy, judgment of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 148).
- 78 However, contrary to what the applicants appear to suggest, the Council, by adopting the contested decision and thus by setting milestones F1G, F2G and F3G, did not seek to replace the rules on value of the rule of law or on effective judicial protection, which are clarified by the case-law of the Court of Justice.
- 79 That is also borne out by recital 45 of the contested decision, according to which milestones F1G, F2G and F3G are without prejudice to the Republic of Poland's obligation to comply, at all times, with EU law and, in particular, with the second subparagraph of Article 19(1) TEU, as interpreted by the Court of Justice of the European Union, and is borne out by recital 50 of the contested decision, according to which those milestones are without prejudice to ongoing or future infringement proceedings and, more generally, to the Republic of Poland's obligation to comply with EU law, in particular the judgments of the Court of Justice of the European Union.
- 80 It follows that, by specifying, in the annex to the contested decision, milestones F1G, F2G and F3G which had to be achieved by the Republic of Poland for the latter to be able to access funding under the Facility, the Council was not seeking to authorise that Member State not to comply with judgments of the Court of Justice of the European Union finding that the Republic of Poland had failed to respect the value of the rule of law or the principle of effective judicial protection.
- 81 It is in the light of the foregoing assessments that it is necessary to examine, in the second place, whether the contested decision, in view of its substance, directly concerns the judges affected by the decisions of the Disciplinary Chamber, in the light of milestone F2G in the annex to that decision.
- 82 In that regard, it should be noted that the applicants rely on both milestones F2G and F3G in order to claim that the introduction of review proceedings concerns the judges affected by the decisions of the Disciplinary Chamber. Given that milestone F3G imposes only a time limit within which the review proceedings must be implemented, and given that the introduction of the review proceedings is, in itself, envisaged by milestone F2G, the question of whether those judges are directly concerned must be examined in the light of only milestone F2G, as set out in the annex to the contested decision.
- 83 The contested decision is addressed to the Republic of Poland, which must achieve milestone F2G, set out in the annex to that decision, in order to benefit from funding under the Facility.
- 84 It is true that, in accordance with the case-law referred to in paragraph 63 above, the fact that the act at issue entails implementing measures does not mean, in itself, that such an act cannot directly affect the legal situation of an individual.
- 85 However, there must be a direct link between the act in question and its effects on the applicant (see, to that effect and by analogy, judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraphs 74 and 76).
- 86 For example, in paragraph 75 of the judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council* (C-348/20 P, EU:C:2022:548), the Court of Justice was able to conclude that there was a direct link between the contested act, which was a directive, and its effects, since the provisions at issue had rendered specific obligations applicable to the applicant.
- 87 In the present case, however, irrespective of any discretion which the Republic of Poland may have as regards achieving milestone F2G, it must be noted that that milestone merely imposed a condition to be fulfilled by the Member State in question in order to be able to receive funding, as stated in

paragraph 74 above. It cannot therefore be concluded that the contested decision, by providing for milestone F2G, definitively imposed specific obligations on that Member State in its relations with the judges affected by decisions of the Disciplinary Chamber.

88 In particular, the contested decision did not have the effect of making the judges affected by decisions of the Disciplinary Chamber subject to the conditions laid down in the contested decision, nor did the latter render a specific rule directly applicable to the judges. Therefore, there is no direct link between that decision, in so far as it set out milestone F2G, and the legal situation of judges affected by decisions of the Disciplinary Chamber.

89 Consequently, even after the adoption of the contested decision, the situation of the judges affected by decisions of the Disciplinary Chamber remained governed by the relevant provisions of Polish law applicable to that situation as well as by the provisions of EU law and the judgments of the Court of Justice of the European Union, without milestone F2G set out in that decision directly altering the legal situation of those judges, in the sense required by the fourth paragraph of Article 263 TFEU.

90 Furthermore, it cannot be accepted, as the applicants claim, that milestone F2G had the effect of ‘allowing, if not requiring’, the introduction of review proceedings under Polish law and that the Commission, having collaborated in the adoption of the contested decision and, thus, in the details of milestones F1G, F2G and F3G, is thereby prevented from claiming, in particular in infringement proceedings, that the review proceedings are incompatible with EU law.

91 First, the contested decision merely approves a series of funding conditions, including milestone F2G, without directly altering the situation of the judges affected by decisions of the Disciplinary Chamber, that situation being altered only by the measure subsequently adopted by the Republic of Poland in order to achieve that milestone. Furthermore, in the light of the conclusion reached in paragraph 80 above, the Republic of Poland cannot be authorised, under milestone F2G set out in the annex to the contested decision, to avoid compliance with its obligations under EU law, in particular the judgments and orders of the Court of Justice of the European Union.

92 Second, even if, as the applicants assert, the Commission’s procedural rights were limited because of its role in the procedure which led to the specifications in the milestones, that would not mean, in the present case, that the judges affected by the decisions of the Disciplinary Chamber are directly concerned by the contested decision.

93 In the light of the foregoing, it must be concluded that the contested decision, which lays down conditions for the Republic of Poland to be able to access funding under the Facility, does not directly affect the legal situation of the judges affected by decisions of the Disciplinary Chamber, with the result that the first condition for concluding that they are directly concerned by the contested decision is not satisfied.

– *Whether all Polish judges and judges of the other Member States and of the European Economic Area (EEA) are directly concerned*

94 According to the applicants, all Polish judges and judges of the other Member States and of the EEA are directly concerned by the contested decision.

95 First of all, as regards whether Polish judges are directly concerned due to the review proceedings envisaged in milestones F2G and F3G, the applicants submit that even judges who are not affected by decisions of the Disciplinary Chamber ‘are subject to a chilling effect in the exercise of their profession’ for such time as the situation of their peers affected by those decisions has not been clarified, and have a heavier workload for such time as their colleagues remain suspended. The prolongation of the suspension of judges affected by unlawful sanctions is ‘likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals’. It thus directly affects the ability of all judges to fulfil properly the functions required of them by virtue of their duties.

96 In that regard, it must be noted that, in so far as milestones F2G and F3G do not directly affect the situation of Polish judges affected by decisions of the Disciplinary Chamber, as stated in paragraphs 82

to 93 above, the same applies, a fortiori, to Polish judges who are not affected by such decisions.

- 97 Next, as regards whether all Polish judges are directly concerned because of milestone F1G, the applicants claim that milestone F1G, as approved by the contested decision, directly affects the legal situation of all Polish judges, in that it is not sufficient to restore effective judicial protection. Polish judges are thus forced to adjudicate on cases, including cases involving funding under the Facility, 'in professionally impossible circumstances where they will still be subject to unlawful pressures and curtailment of their independence and impartiality'. 'Polish judges would be forced to exercise their functions in circumstances where there would be doubts', notably over their ability to make references to the Court of Justice, to give full effect to EU law and to render decisions against the interests of the government or the ruling political party in Poland.
- 98 In that regard, it must be stated that the applicants have not demonstrated that there is a sufficiently close link between the situation of all the Polish judges and milestone F1G to support the conclusion that that milestone directly affects the legal situation of those judges.
- 99 The applicants criticise, in particular, milestone F1G, on the ground that it is insufficient to restore the independence and impartiality of Polish judges and, more generally, a Polish judicial system that complies with the minimum requirements imposed by respect for the rule of law.
- 100 Thus, the applicants merely make assertions of a general nature, based on what, in their view, should have been included in milestone F1G. However, the applicants have not specified, in the actual text of that milestone, specific elements which directly adversely affect Polish judges.
- 101 However, the absence, in the contested decision, of rules which the applicants regard as necessary cannot constitute a direct interference with the rights of Polish judges under the second subparagraph of Article 19(1) TEU that directly affects the legal situation of those judges.
- 102 Lastly, the applicants conclude that milestones F1G, F2G and F3G, as approved by the contested decision, directly affect the judges of the other Member States and of the EEA, due to the close links between the legal orders of those States and that of the European Union.
- 103 First, they submit that those judges are, for example, required to recognise and enforce judgments, to define local jurisdiction in asylum proceedings, or to examine requests for the extradition of a person on the basis of a European arrest warrant. The fact that the rule of law is undermined in one Member State is likely to directly affect the ability of the judges in other States to perform their functions correctly.
- 104 In that regard, even if deficiencies in the legal order of one Member State may have repercussions on the exercise of judicial power in other States and, even if those deficiencies may affect the daily work of judges in those States, such repercussions do not mean that the contested decision is capable of directly affecting the legal situation of those judges.
- 105 Second, the applicants submit that there is a risk of 'spill-over effects' between the Member States, in so far as, where the legislature of one Member State considers legislative reforms, including reforms relating to the organisation of its judicial system, it draws on developments in the other Member States.
- 106 It should be noted that the applicants' considerations relating to a possible spill-over effect, as important as those considerations may be politically, are not such as to demonstrate that the contested decision directly affects the situation of judges in the other Member States or in the EEA.
- 107 Consequently, neither Polish judges, whether or not they are affected by a decision of the Disciplinary Chamber, nor judges in other Member States or in the EEA are directly concerned by the contested decision. Consequently, the applicants cannot rely on the situation of those judges in order to establish the admissibility of their actions.
- 108 Nor can the applicants rely on the third limb of the fourth paragraph of Article 263 TFEU, relating to regulatory acts, on the ground that the judges whose interests they defend, through the interests of their members, have standing to bring proceedings on the basis of that third limb. The condition that an

applicant must be directly concerned by the act being challenged has the same meaning both in the second limb of the fourth paragraph of Article 263 TFEU and in the third limb of that provision (see, to that effect, judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 73). In those circumstances, since the applicants are not directly concerned by the contested decision, there is no need to examine whether that decision constitutes a regulatory act within the meaning of the third limb of the fourth paragraph of Article 263 TFEU.

109 In the light of the foregoing, and given that the judges whose interests the applicants defend are not entitled to bring proceedings themselves, the applicants have also not satisfied the conditions for their actions to be admissible on the basis of the second type of situation set out in the case-law referred to in paragraph 40 above.

The easing of the conditions for admissibility

110 According to the applicants, the conditions for the admissibility of the actions should be eased in the present case.

111 In essence, the applicants submit that the conditions for admissibility must be applied with a certain degree of flexibility, in particular because of the requirements relating to effective judicial protection and the rule of law, the latter being a founding value of the European Union and forming part of its very identity. According to the applicants, the complete system of legal remedies is implicitly based on the premiss that the value of the rule of law will be observed by the Member States. That premiss is no longer established in Poland, since the situation is marked by systemic deficiencies resulting from a deliberate choice not to comply with EU law and, in particular, with the rulings of the Court of Justice of the European Union. In that regard, the applicants submit that a reference for a preliminary ruling is no longer a remedy available to themselves or to the judges whose interests they defend.

112 The Council, supported by Hungary, disputes the applicants' arguments.

113 In that regard, it should be noted that although it is true that the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, such an interpretation cannot have the effect of setting aside the conditions expressly laid down in that Treaty (see, to that effect, judgments of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 98 and the case-law cited, and of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 44 and the case-law cited).

114 The protection conferred by Article 47 of the Charter of Fundamental Rights of the European Union is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the courts of the European Union (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 97 and the case-law cited).

115 In particular, the protection conferred by Article 47 of the Charter of Fundamental Rights does not require that an individual should have an unconditional entitlement to bring an action for annulment of European Union acts directly before the courts of the European Union (judgment of 28 October 2020, *Associazione GranoSalus v Commission*, C-313/19 P, not published, EU:C:2020:869, paragraph 62).

116 In the present case, the applicants cannot claim that they are directly concerned by the contested decision, as stated in paragraph 109 above.

117 In those circumstances, an easing of the conditions for admissibility, as requested by the applicants, would in fact mean setting aside the condition of direct concern which is expressly laid down in the fourth paragraph of Article 263 TFEU, which would be contrary to the case-law referred to in paragraph 113 above. Thus, the systemic deficiencies in the judicial system in Poland alleged by the applicants cannot, in any event, justify the General Court derogating from the condition of direct concern which applies to actions brought by natural or legal persons, in accordance with the fourth paragraph of Article 263 TFEU.

118 That is without prejudice to the Republic of Poland's obligation, in accordance with the second subparagraph of Article 19(1) TEU and Article 266 TFEU, to remedy as soon as possible the infringements found by the Court of Justice of the European Union with regard to the rule of law crisis. Moreover, Article 263 TFEU allows, in accordance with its first paragraph, inter alia, the Member States and the institutions to bring an action against all measures adopted by the institutions, bodies, offices and agencies of the European Union, whatever their form, which are intended to have binding legal effects, without having to demonstrate an interest in bringing proceedings (see, to that effect, judgment of 13 October 2011, *Deutsche Post and Germany v Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 36 and the case-law cited). Furthermore, it is for the Commission, in accordance with its role as guardian of the Treaties, as resulting from Article 17(1) TEU (see, to that effect, judgment of 20 September 2016, *Ledra Advertising and Others v Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 59), and in the light of the fact that the values contained in Article 2 TEU, including the value of the rule of law, define the very identity of the European Union as a common legal order (judgment of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 145), to act, including on the basis of its assessment provided for in Article 24(3) of Regulation 2021/241, in order to contribute to ensuring that the Republic of Poland complies with the requirements resulting from the second subparagraph of Article 19(1) TEU.

119 In the light of all of the foregoing, the actions must be dismissed as inadmissible.

Costs

120 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful and the Council has applied for costs, the applicants must be ordered to pay the costs.

121 Pursuant to Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Republic of Poland, Hungary and the Commission must therefore bear their own costs.

On those grounds,

THE GENERAL COURT (Grand Chamber)

hereby orders:

- 1. The actions are dismissed as inadmissible.**
- 2. Magistratseuropéenspour la démocratie et les libertés (Medel), International Association of Judges, Association of European Administrative Judges and Stichting Rechters voor Rechters shall pay the costs incurred by the Council of the European Union.**
- 3. The Republic of Poland, Hungary and the European Commission shall bear their own costs.**

Luxembourg, 4 June 2024.

V. Di Bucci

M. van der Woude

Registrar

President

1 Confidential information omitted.